91-421

No._____

Supreme Court, U.S.
FILED
AUG 23 1991
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term,1990

BERNARD HANFT,

Petitioner

v.

CAMAR REALTY CORP.

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK SUPREME COURT APPELLATE DIVISION,FIRST DEPARTMENT

BERNARD HANFT
PETITIONER PRO SE
103-25 68th Ave.
Forest Hills,NY 11375
(718)896-5874

QUESTIONS PRESENTED

1. Whether there is a denial of due process under the 14th Amendment,to the U.S.Constitution,due to the absence of an impartial tribune,because the judges of the tribunal,used their own lie as a basis for finding the existence of an essential fact,necessary to the decision,which demonstrates,that their decision was a preconceived result,having nothing to do with the subject matter of the case.

2. Whether there is a denial of the protection afforded by the Equal Protection Clause of the 14th Amendment in the irrational classification,adopted by the Court of Appeals,when it refuses an appeal as of right,from the decision of the Appel-

late Division,which is the initial determination,in the sanctions proceeding,when the right to appeal,as of right,from an initial determination,in a proceeding,is given,in every other court.

3.Whether there is a denial of due process,in violation of the 14th Amendmen where a proceeding is commenced by a set of judges,which,involved,and resulted in a substantial penalty,being exacted,and is carried through to decision,without any particulars having been given as to the charges,at any point,except that one specific was given in the decision,which was a lie,by the Court.(see Question,1,supra.)

4.Whether there is a denial of due process in violation of the 14th Amendment,where a tribunal of judges,which initiated a proceeding sua sponte,where the tribunal,also,decides the same case,

violating the principle,that,**NO MAN MAY BE BOTH ACCUSER AND JUDGE.**

5. Whether,there is a denial of due process in violation of the 14th Amendment because,no evidentiary hearing was held,although a penalty of $10,000,could have been imposed,and one of $2000,was imposed.

6.Whether,there was a denial of due process,in violation of the 14th Amendment, where a non-existent form of action,concocted by a tribunal is used as a vehicle to exact a penalty .

7. Whether there was a denial of due process,due to lack of an impartial tribunal,when the judges of the Court of Appeals disregarded compelling reasons to recuse themselves.

PARTIES

The names of all the parties to the proceeding in the Court,below,whose judgment is sought to be reviewed,here,appear in the caption of the case,except that my name,which appears,in parenthesis,should be deemed substituted for that of the named plaintiff,because,the sanctions proceeding is aimed at me,alone;the penalty was imposed upon me,alone,and it is the review of that sanctions decision by the Court of Appeals,that is sought to be reviewed, here.

The defendants have dropped out of the case.

However,since the judges of the Appe late Division, who initiated and carried through the sanctions proceeding,are the real parties,I am sending the Presiding Judge of the panel,a copy of these papers.

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OPINIONS BELOW

The Sanctions opinion,of the Appellate Division,First Dept.,NY State Supreme Court,was reported at,167 A.D.(2)295.

The Opinion of the Court of Appeals, dated,April 4,1991

The Opinion of the Court of Appeals, dated,June 13,1991 and June 27,1991,

JURISDICTION

The date,the latest decree of the Court of Appeals,was rendered was,June 13 1991 and June 27,1991.The decree is found in Appendix A.

In accordance with Rule 13.1,of this Court,this Petition is filed,within 90 days of the date of the denial of the Motion to Reverse,etc.

The judgment of the NY Court of Appeals,effectively rejected the Petitioner constitutional claims.This Court has cer-

tiorari jurisdiction under 29 U.S. C.§ 125 (a),because of the foregoing.

CONSTITUTIONAL PROVISIONS INVOLVED

The "due process"section of the U.S Constitution,14th Amendment,Section 1,provides,in pertinent part

> "-nor shall any state deprive any person of life,liberty or property without due process of law;nor deny to any person,within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

The underlying matter,Thomas Jones v. Camar Realty Corp.,was commenced in the NY City Civil Court;New York County,to recover damages for the plaintiff,who worked as a superintendent for the defendants,for violations of the Labor Law,by the defendants,such as underpayment of wages.The com plaint was dismissed,as a result of a motion for Summary Judgment.

Appeals to the Appellate Term,and to

the Appellate Division,First Dept.,were denied,as well as a Motion to Reargue,which was denied by the Appellate Division.It was after the latter denial,that the Appellate Division,sent the Sanctions Letter(App.B). Petitioner sent Answer to the Sanctions Letter,which was followed.by the Sanctions Decision(App.C,pages-3a-6a)

A Notice of Appeal,as of right,on constitutional grounds was filed with the NY State Court of Appeals.Tbis was dismissed by a decision,dated,April 4,1991(App.I,p. 23a).A Motion to Review,etc.,was denied by the Court of Appeals,on,June 13,1991 and June 27,1991.(App. A,p. 1a).

WHERE THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED IN THE COURTS BELOW

This is answered by giving,in Appendix D,the pages,from various parts of the papers,filed,which show where the Federal Questions were raised.

All of the references to where the Federal Questions were raised,are from the Jurisdictional Statement,filed with the Notice of Appeal,in the Court of Appeals,except for Question 7,which comes from the Motion to Review,etc.,the latest motion in Court of Appeals,which incorporates Juris/Statement.

As to Question 1:App. D page 7a-8a) As to Question 2:App.D pages 8a-9a)starting with the last paragraph,on the page,and going over to the next page.Question 3: App D pp.9a-10a).Question 4.App.10a-11a).Question 5,App. D,(pp.11a-12a),Question 6:App. D(pp. 12-13a Question 7:App.D(pages 14a-15a)

STATEMENT UNDER RULE 14(j)
AND UNDER RULE 10(1)(c)
LAST CLAUSE

The clause,referred to is,"When a State Court---or has decided a Federal Question,in a way that conflicts with applicable decisions of this Court."

REASONS FOR GRANTING THE WRIT

Every one of the 7 Questions,presented for decision,except for number 7, with which the Appellate Division had nothing to do,illustrates how the decision in the Appellate Division conflicts with the applicable decisions of this Court.This is shown,by the fact,that,every one of the decisions,cited,by the Petitioner,in support of the Petitioner's positions is a decision of this Court.The decision of the Appellate Division is found at App. C,pages 3a-6a.

The Court of Appeals,adopts the decision of the Appellate Division,in every particular,in two decisions.

In the decision,issued,April 4,1991 App. I,page 23a,the Court of Appeals,dismissed the appeal on the ground that no "substantial constitutional question was involved.

The Court of Appeals,said,by its de cision,that:The Justices of the Supreme Court,were wrong in finding constitutional questions of sufficient substantiality to merit review in the following:(a)In Re Murchison,349 U.S.133,39(1955),which stands for that due process requires an impartial tribunal.This is in connection with Question 1, ,where it is demonstrated that the decision of the Appellate Division,adopted by the Court of Appeals,in its two affirmaces,(App. A,1a and App.I,23a),was based on a lie,by that very same Appellate Division In the discussion of Question 1,which is to be found in the ensuing paragraphs,are the reasoning and documents,which demonstrate that the Appellate Division,lied to achieve a preconceived result.(b)In Re Murchison, 349 U.S. 133,139(1955)which stands for;that to meet the **due** process requirement of an

impartial tribunal,the judge cannot be both judge and accuser.This would violate the principle,that no man may be both accuser and judge.The Appellate Division judges made a lying accusation about malice,judged their lie to be true and imposed a penalty (c)Cleveland Board of Education v. Loudermill,470 U.S.532,538(1985),which stands for that;where charges of misconduct are made due process requires that specifics be given,and so on.The Supreme Court found that all these questions,were of sufficient substantiality to merit review and did review them.The Court of Appeals,in two enigmatic decisions(App.I,23a,)consisting of a seven word conclusory statement and (App.A,1a) giving the reason for the decision in one word, decided,that all of the decisions

such as Murchison,etc.,were wrong,because, according to the Court of Appeals,none of the questions raised in those cases were of sufficient constitutional substantiality, to merit review.

The rule,under which the Appellate Division decision was rendered can affect the thousands of lawyers in NY State,who have to appear,before judges.Sanctions,up to $10,000 can be imposed.The Rule is described in the Sanctions Decision(App.C,3-6a)

To leave such a decision,standing, means,that judges would be free to impose sanctions,without any regard to due proces protections,such as:have an impartial tribunal decide the case;provide particulars, as to charges;judges must not be both accuser and judges of the same case,because **no man may be both accuser and judge.**

As to Question 1:On the second page **bottom of first complete paragraph** of the Sanctions Decision(App.C-p.3C)after reciting the false claims of the Defendant that I said that I would bring on lawsuits against him,out of malice the paragraph ends with "**Mr.Hanft does not deny this.**"No source is given for this statement,which is essential to the ruling against the Petitioner.

There is,however,a thorough discussion of this matter,with documents,in the papers,submitted by an attorney for the defendants in response to the Sanctions Letter,which invited submissions on the question as to whether sanctions should be imposed,namely,on page 2 in the second paragraph of the attorney's letter,(App.E 16a)we find"<u>The Action Was Brought in Malice</u>."After reciting his client's claims

as to malice,we find in the last sentence of the paragraph,"The affirmation of Bernard Hanft(A-16-18 A38-41 a part of Exhibit C)do not dispute the assertions".According to the second sentence of the same paragraph the allegations as to malice are found in the affidavit of his client,Sidney Levine.Page 2 of that affidavit is (App E page 17a)

This is an unequivocal lie as is the statement in the Sanctions Decision, **"Mr. Hanft does not deny this"**App.C 5a.) because:on page 4 of a Reply and Answering Affirmation submitted in the course of the proceeding(App. G-19a)in the first paragraph,I state"The undoubtedly courteous client of this courteous attorney swears to an outright lie,in paragraph "5" of his affidavit."I did deny the claims as to malice.The first page of this document is

included in the Appendix(G-18a)to show that it is the same affirmation as the one referred to in the letter of the attorney for the Defendant,(App. E-16a), namely,A-16-18 at the top of the page. The affidavit of the defendant,alleging malice,shows the allegations on page 2. (App.F-17a)in paragraph 5.This is the"paragraph 5"I refer to in my affirmation (App.G-19a),when I state that the Defendant swore to an outright lie in paragraph 5 of his affidavit.

When they stated in the Sanctions Decision,"**Mr. Hanft does not deny this.**" referring to the claim of the defendant, as to malice,the Justices of the Appellate Division had before them,(a)the letter of the attorney for the defendant(App.E-16a) (b)the affidavit of the defendant (AppE-17a)

and (c) my affirmation,where on p.4(App. G-19a),where I state that the defendant swore to an outright lie,when he alleged malice on my part in paragraph 5 of his affidavit(App.F-17a).I did,indeed deny it

The Justices of the Appellate Division,provided no impartial tribunal,because,in order to achieve a preconceived result,they lied.

Due process requires an impartial tribunal.In Re Murchison,349 U.S.133,139 (1955)

As to Question 2.Under the NYC Civil Court Act,there is a right to appeal as of right,from a NYC Civil Court decision, NYC Civil Court Act,Section 1702;from the Supreme Court to the Appellate Division and from every other Court,where an initial determination is made.It is an irrational classification and a violation of

the Equal Protection Clause,therefore,not to allow an appeal as of right from a determination of the Appellate Division, which was an initial determination as happened in this case.Lindsey v.Normet405 US 76,77(1972)

As to Question 3:The Sanctions Letter(App.B-2a)gives no specifications of charges,violating the Due Process Clause. Cleveland Board of Education v.Loudermil 470 U.S.532,538(1985)

As to Question 4:In a setting,where an imposition of up to $10,000 in Sanctions can take place,due process requires ad impartial tribunal.The accuser and the judge may not be the same.In re Murchison 349 U.S.133,139(1955).The kind of untoward occurrences,which can take place,when this rule is violated is described in pages,9, 10,11 and 12.

As to Question 5:In a setting where a decision turns on a question of fact, and where a penalty up to $10000,may be imposed,due process requires an evidentiary hearing.Goldberg v.Kelly,397 U.S. 270(1970).

As to Question 6:There was impermissible judicial legislation,when the Sanctions proceeding was commenced by a Sanctions Letter,(App.B-2a).There is no provision any where in the Civil Practice Law and Rules,the NYC Civil Court Act,the Family Court Act.,etc.,etc.which permits the commencement of a proceeding,by means of a letter.Summonses,Notices of Petition etc.,may be used to commence proceedings but not a letter.

As to Question 7;Without an impartial tribunal there can be no compliance with due

process,because there is a likelihood,that the case will not be decided,on the merits In the case of In Re Murchison,149 U.S. 133,136(1955)it is stated,"But to perform its high function,in the best way,"justice must satisfy the appearance of justice," citing Offutt v. United States,343 U.S. 11,14.

In order to have satisfied the appearance of justice",the remaining judges should have recused themselves.Two of them Wachtler and Titone,"took no part",in the decision,dated,April 4,1991,(App.I,23a)without,of course,giving a reason.

What the judges,actually felt has nothing to do with whether they should have recused themselves.This was an objective test.When they failed to recuse themselves they asserted that should it have become

necessary,they would have,by reversing the sanctiions decision of the Appellate Division:(a) labelled their colleagues in the Appellate Division,liars,This is proved beyond any,doubt,in the papers,they had before them(b)stated that their colleagues in theAppellate Division,showed utter indifference to such requirements of due process,as(i)providing an impartial tribunal by not acting as both accusers and judges (ii)by failing to give specifics of charges(iii)basing their decision,on their own lie(iv)failing to provide an evidentiary hearing,before imposing a substantial penalty.All of the above-mentioned deficiencies,in the behavior of the Appellate Division and more,were proven beyond a shadow of a doubt.

That the Court of Appeals did not

reverse their colleagues in the Appellate Division,in the face of overwhelming,undisputed proof,that required that they be reversed,establishes,that the Court of Appeals should have recused themselves.

CONCLUSION

For all of the preceding,a writ of certiorari should be issued to review the Opinion and judgment of the Appellate Division,and the decisions of the Court of Appeals.

Respectfully submitted

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(718)896-5874

August 15,1991

APPENDICES

APPENDIX A

State of New York, Court of Appeals

CORRECTED ORDER 6/27/91

At a session of the Court, held at Court of
Appeals Hall in the City of Albany
on thethirteenth day
of June A. D. 1991

PRESENT, Hon. Sol Wachtler, Chief Judge, presiding

Mo. No. 588
Thomas Jones,
Appellant,

v.

Camar Realty Corp. et al.,
Respondents.

A motion having heretofore been made herein upon the part of the appellant for reconsideration of this Court's April 4, 1991 order of dismissal of appeal, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

/signature
Donald M. Sheraw
Clerk of the Court

APPENDIX B—SANCTIONS LETTER

Supreme Court Appellate Division

First Department

27 Madison Avenue
New York, N.Y. 10010
212 - 340-0400

Francis X. Galdi
Clerk of the Court

September 28, 1990

Bernard Hanft, Esq.
103-25 68th Avenue
Forest Hills, NY 11175

RE: *Jones v. Camar Realty Corp.*

Dear Mr. Hanft:

Please be advised that the Court, *sua sponte*, is considering the imposition of sanctions against you for frivolous conduct in connection with plaintiff's recent motion for reargument/renewal which was denied by order of this Court dated September 27, 1990.

Pursuant to the Uniform Rules for the New York State Trial Courts, Part 130 you and your adversary are invited to prepare submissions addressing this issue. The submissions are due October 15, 1990.

Very truly yours,
/signature
Francis X. Galdi
FXG:JH

APPENDIX C—SANCTIONS OPINION

Motion No. 3777A

Thomas Jones v. Camar Realty Corp. and Sidney Levine

Per Curiam

After considering submissions from counsel addressing the question whether the court should, *sua sponte*, impose sanctions for frivolous conduct on plaintiff's attorney, Bernard Hanft, in connection with plaintiff's motion to reargue or renew his prior motion for leave to appeal from the Appellate Term order, which had been denied, we conclude that a sanction in the amount of $2,000 should be imposed on Mr. Hanft.

Pursuant to the Uniform Rules for the New York State Trial Courts (22 NYCRR §130.1), the court may impose financial sanctions upon party or an attorney who engages in "frivolous conduct." Since we find that plaintiff's motion for reargument is "completely without merit in law or fact and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law" and that the motion was made "primarily.... to harass or maliciously injure another" (22 NYCRR §§130.1[c][i] and [ii]), we conclude that the motion is frivolous. For reasons that will become clear, however, our finding is against plaintiff's attorney only.

In his 25-page supporting affirmation and 7-page reply affirmation in support of the motion for reargument/renewal—which were accompanied by a total of 29 pages of exhibits—Mr. Hanft failed to raise one coherent argument addressed to the merits of the motion. Rather, he argued, *inter alia*, that at least four of the members of this court who decided the prior motion for leave to appeal "never read" the papers thereon, that the issuance of this court's order denying leave without stating the

reasons therefor is unconstitutional in that it "violates the 14th Amendment due process right to a fair hearing" and is "an exercise of untrammeled discretion", that CPLR 5522(a), which requires the appellate court to state the grounds of its decision only where there is reversal or modification of a judgment or order, "embodies an unconstitutional classification" and, finally, that three members of the panel were "illegally appointed" to this court.[1] In addition, Mr. Hanft argued that there should be a trial of certain issues, including whether all of the judges read plaintiff's papers on the motion for leave to appeal and whether there was "due deliberation" by the judges in connection therewith. We need not belabor the patent lack of factual and legal merit of these arguments; suffice to say, they speak for themselves.

Nor, in his submissions regarding the question whether sanctions should, *sua sponte*, be imposed, does Mr. Hanft present any mitigating circumstance or persuasive reason for our forbearance. The authority to adopt rules providing for costs and sanctions is, contrary to his argument, derived not only from Article 6 §28 of the New York State Constitution and section 211 of the Judiciary Law, but also from "the inherent power of the court to protect its jurisdiction and judgments and to control its docket" (*see, Farguson v. MBank Houston, N.A.*, 808 F2d 358, 360 [5th Cir. 1986]). Mr. Hanft also argues that he did not have sufficient notice that sanctions against him were being considered. Clearly, however, the letter from the Clerk of this court advising Mr. Hanft (and his adversary) that the court "is considering the imposition of sanctions for frivolous conduct against [Mr. Hanft] in connection with plaintiff-appellant's

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[1] In his submission addressing the question of sanctions Mr. Hanft retracts the latter claim

recent motion for reargument/renewal, which was denied by order of this Court dated September 27, 1990" and inviting submissions addressing this issue "[p]ursuant to the Uniform Rules for the New York State Trial Courts, Part 130", was sufficiently specific to provide such notice.

We also believe that the motion to reargue was "undertaken primarily to...harass or maliciously injure another" (22 NYCRR §130.1[c][ii]). Viewed in the context of the "circumstances under which the conduct took place" (22 NYCRR §130.1[c][i][1]), the motion is the most recent example of Mr. Hanft's apparent intention to use the courts to advance his personal vendetta against defendants and, so it would seem, the courts themselves, rather than as a means of dispute resolution. According to the affidavit of Sidney Levine, the individual defendant, Mr. Hanft, formerly a tenant in defendants' building, commenced this action for unpaid wages in behalf of the former superintendent, after warning Dr. Levine that "he would get even with [him] by prosecuting claims against [him] that were of no merit...and that he would make [Levine] spend money to defend claims, permit them to become inactive, and reactivate them at will." Mr. Hanft does not deny this.

Furthermore, in the original determination appealed from, Judge Lippmann, who granted defendants' motion for summary judgment, noted that "[t]hroughout this burdensome litigation, plaintiff has exhibited the utmost contempt for the court as well as for opposing counsel" and that "in pursuing this baseless action plaintiff has put defendant to considerable expense" and warned that "any further denigration of the court by Mr. Hanft will bring upon him severe penalties." Instead of arguing the merits, Mr. Hanft continues to pursue his *ad hominem* attack on the judiciary, particularly the members of this court and, apparently, has no regrets regarding his

handling of the litigation. The courts, traditionally the last hope of the oppressed, the disappointed and the disenfranchised, must never become the final refuge of the perverse.

As to the appropriate amount of the sanction, we are hopeful that $2,000 is sufficient to restrain Mr. Hanft from engaging in further frivolous motion practice in connection with this litigation; it also takes into account the fact that he is a single practitioner.

All concur.

APPENDIX D—SHOWS WHERE QUESTION 1 WAS RAISED

(C-17) The non-answer, here, is similar to the other non-answer, in its resemblance to the two one-word decisions, issued by the A.D. All four are bereft of reasons. Could this be because the A.D., has none? This non-answer, masquerading as an answer is found in the second half of paragraph (4) of the Opinion, Ex. C, as follows; after reciting the first paragraph of the Sanctions Letter, we find another conclusory statement, similar to those found in the orders, where there are statements that due deliberation was had, etc.,;" —was sufficiently specific to provide such notice." This is the same as saying; "We don't have to give reasons. The statement is so, because we say so. This is enough." Of course it is not.

(C-18) To recapitulate: All of the constitutional points raised in the Motion to Reargue and/or Renew, Ex. I, and my Answer to the Sanctions Letter, Ex. D, are either not answered, altogether, or, "answered" with non-answers, described, above, in paragraphs, (C-15), (C-15) and (C-16). This leaves them, conceded.

(C-19) From here, on, non-constitutional questions are dealt with, in accordance with the principles, explained in POINT I, of this Jurisdictional Statement.

POINT X
ONE OF THE TWO BASES FOR THE OPINION IS AN OUTRIGHT LIE

(C-20) There are two bases for the decision, namely, (a) that the Motion to Reargue and/or Renew Ex. I is frivolous (b) that it was brought on out of malice toward the individual defendant. This is based, on the claim, that, I never denied his claim that I said I would

bring on baseless lawsuits against him, the one herein, being one. A lawsuit where, three of four causes of action were not even mentioned in the basic decision, Ex. G, cannot be considered baseless.

SHOWS WHERE QUESTION 2 WAS RAISED

POINT I
NON-CONSTITUTIONAL ERRORS IN THE COURT BELOW MUST BE REVIEWED, AS OF RIGHT

(C-2) The non-constitutional errors must be reviewed because there is a right to an appeal as of right from the Appellate Division to the Court of Appeals, because: there are statutory provisions, in the CPLR, in the NYC Civil Court Act, and elsewhere, giving the right to appeal as of right, in every type of case, from the court making the initial determination; to hold that an appeal, from the determination of the Appellate Division, which initiated the sanctions proceeding does not lie, as of right, would be an unconstitutionally irrational classification, *Lindsey v. Normet*, 405 US 76, 77, where we find, "When an appeal is afforded, however, it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause." and cases cited; it is an irrational classification to afford appeals, as of right, universally, from courts, where an initial determination is made, but withhold it, where, the initial determination is made in the Appellate Division; the sanctions decision, sought to be appealed, grows out of a proceeding, initiated in the Appellate Division, by sending me a letter. Ex. D, a should we say, unusual way to commence a proceeding, so unorthodox, that, there is no mention of it in the CPLR; the provisions of the NY State Constitution, which limits appeals as of right, to none but strictly constitutional questions

if applied here, would violate the Equal Protection Clause of the U.S. Constitution, as an irrational classification; there is no valid state desideratum, which can be cited to justify giving litigants an appeal, as of right, from decisions, in every court, where an action was initiated, while depriving a litigant of that right where, an appeal is sought from a determination in a matter, initiated in the Appellate Division, as a matter of fact, by the Appellate Division, itself Ex. D; if the imposition of sanctions, by the Appellate Division, where the sanctions action is commenced in the Appellate Division, cannot be exercised, by the Appellate Division, in a constitutional manner, because no appeal is permitted, then, the Appellate Division is barred from initiating any sanctions action.

SHOWS WHERE QUESTION 3 WAS RAISED

POINT II
LACK OF NOTICE OF ANY SPECIFICS IN THE SANCTIONS LETTER, EX. D, IS AN UNCONSTITUTIONAL DENIAL OF DUE PROCESS

(C-3) The lack of specifics in the sanction letter, made it impossible to prepare a proper defense. The sanctions letter, Ex. B, which has no sanction in the CPLR or anywhere else, merely states, "Please be advised that the Court, sua sponte is considering the imposition of sanctions against you for frivolous conduct in connection with plaintiff's recent motion for reargument/renewal which was denied by order of this court, dated, September 27, 1990." So far, I have been unable to discern, in this sentence any mention of any specific frivolous conduct. An example of how my defense was hampered by the lack of specifics is: One of the two bases for the imposition of a $2000.00 exaction is the claim that the motion herein is actuated by malice, because I threatened to bring baseless

lawsuits against the landlord. In the last sentence of paragraph (5) of the Opinion, Ex. C, we find, "Mr. Hanft does not deny this." If this charge had appeared in the sanctions letter, Ex. B, I would have proved by documentary evidence, including papers submitted by the defendants, that, this is an outright lie. I deny this accusation in an affirmation, which is part of the record. This is discussed, in detail in the detailed analysis of the Opinion, later on in these papers.

(C-4) This is another example of the evils, which would result from being prohibited from appealing a determination, such as the one herein. A tribunal could level charges without specifics, for the purpose of preventing a defense, and then base its decision, on a matter of which the litigant was not apprised, relying on the lack of a right to appeal to get away with such a maneuver.

SHOWS WHERE QUESTION 4 WAS RAISED

POINT VI
THERE WAS NO DECISION BY AN IMPARTIAL TRIBUNAL, WHICH MEANS NO FAIR HEARING, WHICH IS A DENIAL OF DUE PROCESS

(C-9) In *Sharkey v. Thurston*, 268 NY 123, 126, there is: "It is a fundamental rule of our common law embodied in Constitutions of our State and Nation, that no person may be judged guilty and punished upon a charge of wrongful conduct without a hearing—The cause may not be prejudged and *no man may be both accuser and judge*." (emphasis supplied). See also, *In Re Murchison*, 349 US 133, 139 (1955).

(C-10) The decision is unconstitutional, because not rendered by an impartial tribunal, because: (a) since this is a sua sponte matter the judges were both the accusers and the judges (b) they showed

their lack of impartiality and personal involvement as follows: (i) by ignoring such a matter, as, the affirmance by Appellate Term of non-existent reasons for non-existent actions, among other things and by issuing two one-word decisions, without explaining how something as completely obvious and noteworthy could have been overlooked (ii) by the following statements in their decision: in paragraph (5) half-way down "... Mr. Hanft's apparent intention to use the courts to advance his personal vendetta against defendants, and so it would seem the courts themselves... "; paragraph (6), on page 4, half-way down, "... Mr. Hanft continues to pursue his ad hominem attack on the judiciary, *particularly the members of this Court*, and, apparently has no regrets regarding his handling of this litigation." (emphasis supplied). It couldn't be any clearer, that they should have recused themselves. It would have been, in accord with due process, of which there is none in the decision, if examples would have been given, to explore whether or not these so-called attacks, were in fact attacks, without any justification. There are no statements concerning the judges involved in this case, or the statements about how Moraco, is a multiple liar, which are not completely justified.

SHOWS WHERE QUESTION 5 WAS RAISED

POINT VII
THERE WAS NO EVIDENTIARY HEARING AS REQUIRED BY DUE PROCESS

(C-11) When the evidentiary hearing takes place, these judges will play the part of the accusing witnesses, as should have been done had any regard been given to due process.

(C-12) In *Goldberg v. Kelly*, 397 US 270, 1970, there is: "In almost every setting, where important decisions turn on questions of fact

due process requires an opportunity to confront and cross-examine witnesses." This means an evidentiary hearing. An exaction of $2000.00 is an important decision, where the imposition could have been considerably more. In *Larisa F. v. Michael S.*, 470 NYS2d, 999, 1000 (Fam. Ct. 1984), "It is not necessary for the purpose of the issue sub judice to determine, which category is at issue. The penalties for any contempt are so drastic, including loss of liberty and substantial fines, that the contemnor's due process rights must be protected. The contemnor has among other rights the right to a full evidentiary hearing." A possible exaction, running into thousands of dollars is the same as a substantial fine.

SHOWS WHERE QUESTION 6 WAS RAISED

(C-25) A copy of this Jurisdictional Statement, with a covering letter, calling attention to paragraphs (C-22), (C-23) and (C-24) is being sent to the Judges of the A.D., who were responsible for this sanctions proceeding, through the Clerk, Galdi. Since it is demonstrated, beyond cavil in those paragraphs, that the statement appearing at the end of paragraph (5) of the Opinion, Ex. C, "Mr. Hanft does not deny this" is not true, will these judges of the A.D. disavow this statement, in writing, or, explain how it is true. Will they do this in the name of justice, probity, fair dealing, etc., and to avoid, even the appearance of condoning lies, even indirectly. Since, the destruction of one of the two essential pillars of the Opinion, Ex. C, has become apparent, will these A.D. judges now withdraw the proceeding and nullify the $2000.00 exaction?

POINT XI

THE SANCTIONS LETTER IS A NULLITY

(C-26) The Sanctions Letter (Ex. B) is a nullity, because: (a) under CPLR 103(a) and (b) there is only one form of action. The letter

would not qualify as a summons and complaint, nor even as a special proceeding. (b) it is none of the foregoing, because there is no Notice of Motion, nor Notice of Petition, and accompanying supporting papers, which perforce would have to state what the action was about in some detail, or be subject to being dismissed, for vagueness, or for not stating facts sufficient to state a cause of action.

(C-27) This is also a direct constitutional violation of separation of powers, because, since it is sanctioned nowhere it constitutes impermissible judicial legislation.

SHOWS WHERE QUESTION 7 WAS RAISED

COURT OF APPEALS

THOMAS JONES
Plaintiff-Appellant

-against-

CAMAR REALTY CORP., et ano
Defendants-Respondents

AFFIRMATION IN SUPPORT OF MOTION
MO NO 346 SSD 25
RELATING TO SANCTIONS

BERNARD HANFT, being an attorney, affirms under CPLR 2106:

1. I represent my self, here, because, unconstitutional, vindictive, illegal, abhorrent sanctions were levelled against me only.

Appendix D

POINT I
ALL OF THE JUDGES MUST RECUSE THEMSELVES, FROM ANY PARTICIPATION IN DECIDING THIS MOTION

2. Without an impartial tribunal, there is no compliance with Due Process. In the case of *In Re Murchison*, 349 US 133 (1955) at 136, we find "But to perform its high function in the best way justice must satisfy the appearance of justice." cites *Offutt v. United States*, 343 U.S. 11, 14, 75 St. Ct. 11, 13.

3. In order to "satisfy the appearance of justice" the remaining judges must recuse themselves. It doesn't matter what they actually feel. This is an objective test. If these judges refuse to recuse themselves they are asserting that should it become necessary to reverse the peculiar decision already made, they are ready to do so, even if it means that by reversing the illegal, unconstitutional sanctions decision of the Appellate Division; (a) they will be labeling, their colleagues, Ellerin, Smith, Carro, Sullivan and Kupferman, liars (see the discussion, hereinafter, where documentary proof was submitted that this is the case); (b) that their A.D. colleagues displayed utter indifference to the requirements of due process (c) that their A.D. colleagues answered none of my arguments, with even a semblance of logic (d) that their COA colleague and Chief, Wachtler, knowingly issued a Sanctions rule, which he had no authority to issue (e) that their COA colleague and chief, knowingly issued a sanctions rule," which is unconstitutional, on more than one ground. They must be prepared to make the above-mentioned, explicit and/or implicit findings, if they grant my motion. If they are not, then, it is not possible for them to grant my motion, even if such action is completely warranted. If one of the two decisions they must make is impossible for them, then, for the

"appearance" of justice they must recuse themselves. How can they expect anyone to believe objectively that they can do these things should they become necessary?

4. In order to grant my motion, these judges will have to reverse their own decision, by which they have shown that they agree with or condone, all of the illegal actions of the their A.D. colleagues, and of their COA colleague. Can they expect, that anyone, could objectively believe that they can, by granting my motion to reverse, condemn themselves?

5. If the two judges, who claim to have taken no part, have taken this action for the sake of the "appearance of justic"e, then, the rest must do so.

6. The "rule of necessity" invoked in the *Morgenthau v. Cooke* case, 56 NY(2)24, will not work, here, because the judges have already made common cause with the A.D., and with Chief Wachtler. Judges would have to be brought in from other jurisdictions, in the hope the the "appearance of justice" might be attained.

APPENDIX E—PAGE 2 OF LETTER FROM ATTORNEY FOR DEFENDANTS

In short, plaintiff sued for overtime superintendent's wages, but in deposition testimony he testified that he had no recollection of any date or time on which he provided extra work, except for instances which he billed separately, as a contractor, and for which he was paid in full.

In opposition to the motion for summary judgment, plaintiff submitted only the hearsay affirmation of his attorney. If plaintiff had any proof that the defendants owed him any money for any reason, he would surely have provided evidence in opposition to the motion. A complete statement of the history of these proceedings, which includes the first action under the New York Civil Court Index No. 23853-86 and the second action under New York Civil Court Index No. 59629-88 is set forth at pp 5-16 of Exhibit C.

The Action was Brought in Malice

Plaintiff's counsel never denied the defendants' assertions that plaintiff's counsel was acting purely out of malice in bringing the action. The affidavit of Sidney Levine [see A1-A3 a part of Exhibit C annexed] sets forth the prior relationship between plaintiff's counsel and defendant Levine, as well a specific threat by plaintiff's counsel directed at defendant Levine. The affirmations of Bernard Hanft (A16-18, A38-41 a part of Exhibit C) do not dispute the assertions. For purposes of the motion resulting in the order granting summary judgment and for purposes of this appeal, the assertions are deemed admitted.

APPENDIX F—AFFIDAVIT OF DEFENDANT LEVINE

2. This affidavit will be confined to the facts relating to my assertion that the activities of plaintiff's counsel are a manifestation of his personal ill will toward me personally and have nothing to do with the justice of this case.

3. Plaintiff's counsel was a month to month tenant for years in the building of which I was the Landlord. After considerable problems with him and on September 26, 1983, I terminated his month to month tenancy, effective October 31, 1983. (See notice, Exhibit P). Thereafter on November 25, 1983, in summary proceeding entitled *Camar Realty Corp.* v. *Bernard Hanft* (L&T 98037-83), Mr. Hanft consented to a final judgment of possession in a stipulation which was so ordered (Exhibit Q).

4. The stipulation required that he replace certain broken plate glass. When I pursued this he prevented me from asserting my rights by filing a $25,000 claim against me. [Nothing came of it].

5. During this period of time, late 1983, Mr. Hanft told me that he would get even with me by prosecuting claims against me that were of no merit. He said to me that he would make me spend money to defend claims, permit them to become inactive, and reactivate them at will.

6. The instant action, *Jones* v. *Camar and Levine* is just such a claim. As is indicated in the deposition testimony of Mr. Jones, he was paid for all work he perfo med. I supplied

APPENDIX G—1ST AND 4TH PAGES OF AFFIRMATION OF PETITIONER AFFIRMED, MAY 29, 1989 REPLY AFFIRMATION A-16-18

CIVIL COURT: NEW YORK COUNTY

THOMAS JONES
Plaintiff

-against-

CAMAR REALTY CORP., et ano
Defendants

INDEX # 59629/88
REPLY AND ANSWERING AFFIRMATION

BERNARD HANFT, being an attorney, affirms under CPLR 2106:

1. I am the attorney for the plaintiff and make this affirmation, based upon papers in the file and because the client resides in a county other than the county, in which I have my office.

2. I believe that it is important to get a feel of the ambience or the aroma of a case like this, in order to appreciate its manifold sparkling facets.

3. When the *previous* case appeared before Judge De Phillips, for the first time instead of asking to have the matter dismissed, this attorney, claims, that, out of pure courtesy, he notified me by mail of the adjourned date. I never received the letter, but be that as it may, I believe it would have been a much more convincing act of courtesy, if he would have notified the judge, that, by a stipulation which this attorney, procured; drew up; and signed, dated; July 16, 1986. (Ex. A) it was agreed that "1. Plaintiff consents to removal of

13. The undoubtedly courteous client of this courteous attorney swears to an outright lie, in paragraph "5" of his affidavit. The relevance of this escapes me, but I am confident that there is a courteous reason for it. If only we were informed as to what it was.

14. I sued for the entire period of time to make sure that my client was fully protected. An unexpected bonus is that the entire period is validated, since the attorney for the defendants was too courteous to invoke the Statute of Limitations. Could that be the reason why there seems to be an undercurrent of anger in this attorney's papers? That verges on the discourteous.

15. If you were wondering why I haven't discussed this attorney's answer to my motion, the answer is that I haven't been able to find it in the close to one pound of garbage, submitted. As a matter of fact, only a 1¼ pages of the affirmation, out of ten and 3 paragraphs out of 34 are even designated as relating to the PRESENT ACTION. I don't find anything to counter my motion. However, since I have found that you can't be too careful. As to paragraph 32: The motion asks for different relief. Paragraph 33: What does the unperfected appeal have to do with it. So that no obvious mistakes are made the appeal is hereby withdrawn. 34: Nonsense; as explained previously.

16. At the risk of being accused of repetitiousness, I want to call the court's attention to the following: (a) the case before the Court is the case with Index # 59629/88; that's 59629/88, where I made the motion before the Court, which is described as Motion to Dismiss Affirmative Defense & Motion to Declare the Defense of Statute of Limitations Waived. The reason for this reminder is that from the papers, submitted by this attorney, the bulk of which deal with the previous case, which had the Index # 23853-86, it is hard

to tell that the present case, with its motion is the one before the Court. (b) nowhere in his papers does this attorney present any arguments against my motion. This means that the motion has to be granted on default.

17. It goes without saying that a courteous attorney like this had no intention to create any confusion. On the same basis we know that the description on the well-deserved statements I made in the PREVIOUS CASE (Index # 23853-86, regarding Judge Lippmann were necessary for you, Judge to have in order to render a just decision in this case. The ways of courtesy are an enigma within an enigma.

WHEREFORE, it is asked, on behalf of the Plaintiff, that, all cross-motions, made on behalf of the Defendants, be denied and that all other requests for relief be rejected.

Affirmed on 5/29/89

/Signature
Bernard Hanft

APPENDIX H—LETTER OF WITHDRAWAL FROM ATTORNEY FOR DEFENDANTS

Livoti, Bernstein & Moraco
Attorneys at Law
441 Lexington Avenue - Suite 1209
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(212) 490-3944

Robert V. Livoti
Barry I. Bernstein
Robert F. Moraco
Barbara D. Cohen
Legal Assistant

February 6, 1991

State of New York
Court of Appeals
Clerk's Office
Albany, New York 12207
ATT: Donald M. Sheraw

RE: Thomas Jones v. Camar Realty Corp., and
Dr. Sidney Levine Mo. No. 25 SSD4

Dear Sir,

I represent the defendants and acknowledge receipt of various letters from Bernard Hanft, Esq. to the Court and a notice of motion, dated February 5, 1991 and supporting papers on his application to reverse decision.

My clients have instructed my to interpose no further papers and in incur no further expense in the above action. In declining to

address Mr. Hanft's most recent application, I do not intend acquiescence.

If you have the opportunity to review the copies of two letters to the Appellate Division and exhibits [A to H] submitted with my letter to you of December 10, 1990, you will have a clear picture of the history of this case, as well as some feeling for the abuse to which my clients, my firm and the judges and justices who presided in this matter, have been subjected.

The noun "scold" means one who persistently rails against others. Perhaps Mr. Hanft should be precluded from further legal activity in this case [or in any other case, for that matter] without written permission of a judge. There are no limits to the number of baseless appeals and unmeritorious motions that he will undertake, except for the limits that this Court may impose.

Respectfully

LIVOTI, BERNSTEIN
& MORACO

By: /signature
Robert F. Moraco

RFM:ls

cc: Dr. Sidney Levine
9801 67th Avenue
Rego Park, New York 11374

APPENDIX I—COURT OF APPEALS, DECISION, DATED, APRIL 4, 1991

State of New York,
Court of Appeals

At a session of the Court, held at Court of
Appeals Hall in the City of Albany
on the fourth day
of April A. D. 1991

PRESENT, Hon. Richard D. Simons, Senior Associate Judge, presiding

Mo. No.346 SSD 25
Thomas Jones,
Appellant,

v.

Camar Realty Corp. et al.,
Respondents.

The appellant having filed notice of appeal in the above title and due consideration having been thereupon had, it is ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court *sua sponte*, upon the ground that no substantial constitutional question is directly involved. Chief Judge Wachtler and Judge Titone took no part.

/signature
Donald M. Sheraw
Clerk of the Court